In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 120 of 2005 (O&M)
Date of decision: 20.10.2009

M/s Grow on Exports (India) Ltd.New Delhi

.....petitioner

Versus

Mool Chand Birla

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Sudhir Mittal, Advocate.
for the petitioner.

None for the respondent.

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SABINA, J.

Vide this revision petition, filed under Article 227 of the Constitution of India, the petitioner has challenged the order dated 24.11.2004 passed by the Additional Civil Judge (Sr.Division), Malout, District Muktsar.

Plaintiff Mool Chand Birla filed a suit for recovery of Rs.6,12,219/-. The ex parte decree passed in favour of the plaintiff was set aside by this Court. Civil Revision No.3701 of 2003 was filed

by the petitioner in this Court challenging the interim order passed by the trial Court granting conditional leave to defend the suit. On 18.8.2003, following order was passed by this Court in the said revision petition:-

> "However, conditional leave to defend is granted permitting the defendant-petitioner to contest the suit on furnishing security for a sum of Rs.3 lakh, within one month from today in respect of property situated at Delhi to the satisfaction of the trial Court, which will be accepted after notice to the parties. The order passed by the trial Court stands modified to this extent and the order striking off defence will also stand modified in these terms. If the security is not furnished, the defence of the petitioner will remain struck off."

Thereafter, the said order was modified by this Court on 18.9.2003 and the following order was passed:-

> "Heard.
>
> The order dated 18.8.2003 is modified to the extent that the petitioner will be free to furnish security in respect of property situated at Jaipur, within four weeks from today. This order is subject to payment of Rs.2000/- towards costs."

Thus, this Court directed the trial Court to accept fresh security after giving notice to the parties. On 13.10.2003, following

order was passed by the trial Court:-

> "Present: Counsel for the parties.
>
> File taken up today as in the light of order dated 18.8.2003 and 18.9.2003, security in form of surety bonds in the sum of Rs. 3 lacs furnished, same are accepted and attested. Costs also paid."

Thereafter, plaintiff moved an application that the order dated 13.10.2003 be recalled as the same had been passed without issuing notice to the parties in terms of the order passed by this Court dated 18.9.2003. Vide impugned order the said application was allowed and the petitioner was directed to furnish fresh security. Hence, the present revision petition.

After hearing learned counsel for the petitioner, I am of the opinion that the instant revision petition deserves to be allowed.

A perusal of order passed by the trial Court on 13.10.2003 reveals that the security was accepted by the trial Court in terms of the orders of this Court dated 18.8.2003 and 18.9.2003 in the presence of counsel for both the parties. Costs were also paid by the petitioner in terms of the order of this Court. In these circumstances, there was no occasion for the trial Court to have recalled the order dated 13.10.2003 on the ground that the same had been passed without issuing any notice to the plaintiff. The security was accepted in the presence of counsel for the plaintiff. Since counsel for the plaintiff was present, there was no occasion to issue

notice to counsel for the plaintiff at the time of acceptance of security furnished by the petitioner-defendant. In case the counsel for the plaintiff had any objection to the security furnished by the petitioner, the counsel should have objected to the same when the order dated 13.10.2003 was passed. Rather the costs were paid and the security was furnished by the petitioner in terms of the order of this Court.

In these circumstances, this revision petition is allowed. The impugned order, whereby the order passed by the trial Court dated 13.10.2003 was recalled, is set aside.

(SABINA)
JUDGE

October 20, 2009
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